

VICTIMS' RIGHTS AND SERVICES

Services

Victims of crime typically experience physical, financial and emotional effects from the crime. During the appeals process, these effects may continue. The Advocates of the Attorney General's Office of Victim Services are available to assist you in accessing a wide range of victim services and in addressing any concerns or questions you may have about the appeals process. To request help, contact the Office of Victim Services at the numbers listed at the end of this brochure.

Rights

Victims of crimes committed in Arizona are legally entitled to be notified, upon request, of all appellate proceedings and the outcomes of those proceedings.

Notification that defendant has filed an appeal...

When the Attorney General's Office is notified that an appeal has been filed, an advocate will notify you. If you would like copies of the briefs filed in your case, in most instances, they can be provided to you.

Notification of Oral Arguments/Evidentiary Hearings...

If an Oral Argument and/or Evidentiary Hearing is scheduled in your case, you will be notified of the date, time and location of the proceeding. In addition, arrangements can be made to have an advocate accompany you to the proceeding, should you be interested in attending and observing.

Notification of Appellate Decisions...

When a decision is issued by the appellate court, your advocate will send you a letter advising you of the decision and briefly explaining what it means. Your advocate is available to answer any questions you may have regarding the decision.

TERMS YOU NEED TO KNOW

Appeal – A request to a higher court to review the lower court's proceedings and outcome. The defendant argues that the lower court violated his or her rights in some way that warrants getting a new trial, or a new/reduced sentence.

Direct Appeal - Filed to the Arizona Court of Appeals in non-capital cases. In cases in which the defendant was sentenced to death, (capital cases) the direct appeal is filed with the Arizona Supreme Court.

Opening Brief - A written document in which arguments are presented that the defendant's conviction and/or sentence is improper and should be reversed.

Answering Brief – A document filed in response to the Opening Brief.

Reply Brief – to present rebuttal arguments to the Answering Brief.

Oral Argument – a proceeding which provides the Court the opportunity to ask questions of both the State and the defense.

Affirms – The defendant's conviction and sentence, as determined by the trial court, stands.

Modifies – The appellate court itself may change a defendant's sentence or correct a conviction to comply with legal requirements without requiring the trial court to re-do anything.

Remands and/or Reverses – Directs the lower court to either re-try or re-sentence the defendant according to its instructions.

Post-Conviction Relief Petitions (PCR) – Under Arizona's Rules of Criminal Procedure, a defendant has the right to file a PCR petition asking for relief from the conviction and/or sentence on various, yet specific grounds. The specific grounds for seeking relief under these rules include claims that

1) the conviction or sentence violated State and/or federal constitutional rights, 2) the trial court lacked proper jurisdiction, 3) the sentence was excessive and illegal, 4) newly-discovered material facts exist, or 5) a significant change in the law has occurred which should be applied retroactively in the case.

Evidentiary Hearing – witnesses may be called and in some cases the defendant may need to be present.

Petition for Writ of Habeas Corpus – Claims raised in habeas petitions are limited to alleged violations of the defendant's federal constitutional rights.

STAY INFORMED

If you wish, the advocates of the Attorney General's Office of Victim Services will notify you when an appeal is filed, if oral arguments or evidentiary hearings are scheduled and when decisions are issued. Know that the appeal could take several years. Be sure to keep your address up-to-date with each of the following agencies during the entire post-conviction stage of the case:

- ✓ **The prosecutorial agency**
(county attorney's office) that represented the State at the trial level.
- ✓ **Arizona Attorney General**
Office of Victim Services
1275 West Washington
Phoenix, Arizona 85007
- ✓ **Arizona Department of Corrections**
Victim Notification
1601 W. Washington
Phoenix, Arizona 85007
- ✓ **Arizona Board of Executive Clemency**
Victim Services
1645 W. Jefferson
Phoenix, Arizona 85007



OFFICE OF
ATTORNEY GENERAL TERRY GODDARD

The Criminal Appeals Process

A Guide for Arizona Crime Victims

PHOENIX
1275 West Washington
Phoenix, Arizona 85007
Ph: (602) 542-4911
Fax: (602) 542-8453

TUCSON
400 West Congress
South Bldg, Suite #315
Tucson, Arizona 85701
Ph: (520) 628-6456
Fax: (520) 628-6566

Toll Free: (866) 742-4911

*learn more about
victims' rights on
the internet at
www.azag.gov*

APPEALS PROCESS

Our criminal justice system includes a number of steps that must be completed before a person can be convicted of a crime. The police investigation, arrest, review by a prosecutor, court hearings, trial and sentencing are all different stages of this criminal justice process. As a crime victim, you were probably involved in one or more of these activities.

While conviction and sentencing often mark the end of the court's involvement in a criminal case,

in some instances, the case may become involved in the **appeals process**.

In the majority of cases, defendants sentenced to prison or jail remain incarcerated while their case is on appeal.

In Arizona, every person convicted of a felony may appeal. Defendants sentenced to death, automatically have an

appeal filed on their behalf. **As the victim of a crime, you are entitled, upon request, to be advised of the case status while it is on appeal and of the outcome of the appeal.**

The appeals process is different from the trial process in many ways including:

- the majority of the arguments presented are made in writing rather than in open court;
- a panel of judges, rather than a judge and jury, consider and decide the case;
- the issues relate to the defendant's rights during the prosecution of the case, rather than the crime and what happened to the victim;
- few, if any, hearings are scheduled.

There are three basic avenues of appeal available to convicted criminals:

- 1 a direct appeal;
- 2 a post-conviction relief petition (PCR);
- 3 a petition for writ of habeas corpus.

Each of these avenues of appeal has several steps. It is the defendant's choice whether to pursue any or all of these appeals.

DIRECT APPEAL

A defendant must file a **Notice of Appeal** within 20 days of being sentenced. Several months later, the defense attorney or defendant, will file an **Opening Brief**.

The appeals process is very different from the trial proceedings in Superior Court.

The Attorney General is provided with a copy of the Opening Brief and an Assistant Attorney General (AAG) is assigned to the case. The AAG reviews the arguments presented in the Opening Brief, evaluates the official court record and prepares an **Answering Brief**.

The defense may file a **Reply Brief**. Then a panel of three judges from the Court of Appeals (or five judges from the Arizona Supreme Court in capital cases) reads these briefs. The Court may schedule an **Oral Argument**. The defendant is usually not present at the Oral Argument. Victims may attend oral arguments but are not allowed to participate in any way.

Even if an Oral Argument is held, the Court will issue a written decision regarding the case any time from a month to a year later. Depending on the complexity of the issues, the decision may be quite lengthy. The Court may affirm, modify, remand and/or reverse the outcome of the lower court.

POST-CONVICTION RELIEF PETITIONS (PCR)

In both capital and non-capital cases, the filing of a PCR Petition takes place with the original trial court, typically a county superior court. The judge who tried the case, if still in office, will typically be assigned to handle the PCR.

A defendant, regardless of whether the conviction was by a jury or a plea agreement, may file a PCR petition. The original prosecutor will represent the State during PCR proceedings. Therefore, if your case was handled by the county attorney's office, they will also handle the PCR. If, however, your case was originally prosecuted by the Attorney General's Office, an AAG will be assigned to handle the PCR.

Much like a direct appeal, the arguments presented for post-conviction relief are made in writing by the defendant or a defense attorney, the State responds in writing, and an Oral Argument may be scheduled. In addition, an **Evidentiary Hearing** may be scheduled; witnesses may be called and in some cases the defendant may need to be present.

Again, months to a year or more after all written and oral arguments, and any new evidence, are presented, the Court will issue its decision regarding the PCR petition. Just like in a direct appeal, the court may affirm, modify or reverse the case.

PETITIONS FOR WRITS OF HABEAS CORPUS

Petitions for Writs of Habeas Corpus are filed with the United States District Court. A Habeas petition may not be filed unless (and until) all avenues of appeal at the state level have been exhausted, including the direct appeal and the PCR.

Federal Rules of Procedure specify the kinds of claims that can be raised in habeas petitions, the time frames for filing such petitions and the procedures to be

followed by the Court, the State and the defendant and/or the defense attorney.

Much like a direct appeal and PCR, the arguments presented for habeas relief are made in writing by the defendant or a defense attorney, the State responds in writing, and an Oral Argument or an Evidentiary Hearing may be scheduled.

Appeals are often quite lengthy and complex.

Again, some months to several years after all written and oral arguments, and any new evidence are presented, the Federal District Court will issue its written decision regarding the habeas petition. Just like in a direct appeal or PCR, the court may affirm, modify or reverse and/or remand the case.

Because the appeals process has so many steps, it can take many years for a case to be fully resolved on appeal. In addition, because of the slow pace of the appeals process, notifications about your case on appeal may be infrequent. It is important, therefore, that you keep the Attorney General's Office informed of any changes in your address and telephone number that occur over the course of the appeal in order that you may receive notice of the status of the case.

SUMMARY

The Attorney General usually represents the State in felony (criminal) and Habeas proceedings. In PCR petitions, the original prosecutor will represent the State. The State or the defendant – whoever loses – may continue the process to higher courts. These steps proceed in the fashion described above, with written documents submitted by both sides and the courts eventually issuing decisions based on the arguments presented.